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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL J. CONLON,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.)

Defendants.)

CV-N-01-700-DWH-VPC

RENEWAL OF UNITED STATES'
MOTION TO DISMISS ACTION
OR FOR SUMMARY JUDGMENT

FILED
03 OCT 15 PM 12:27
U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY: [Signature]

Comes now the United States of America, through its undersigned counsel, and renews its motion (#44) for dismissal of this action or, alternatively, for summary judgment. In support of the renewal of such motion, the United States provides the following procedural history and status report.

Conlon commenced this action pro se against multiple individuals and institutional defendants, seeking damages arising from the "illegal incarceration" of Conlon. In March 2002, Conlon (through counsel) filed an amended complaint. The various defendants (all of whom are federal officials or federal entities) filed a joint motion (#15) to dismiss or for summary judgment. Conlon opposed the motion and also sought leave to file a second amended complaint. Upon leave being so granted, the second amended complaint was filed (#42) although the

1 defendants' dispositive motion was then pending as to the first
2 amended complaint. By Order (#41) entered March 14, 2003, this
3 Court denied the motion to dismiss without prejudice. The Court
4 concluded that the filing of the second amended complaint had
5 left the motion to dismiss the first amended complaint "moot."

6 During the pendency of the motion to dismiss the first
7 amended complaint, this matter was referred to the United States
8 Magistrate Judge for a settlement conference (#38). The parties
9 jointly requested a settlement conference and agreed to a date
10 for the conference (##38&39). Shortly before the settlement
11 conference was to begin, Conlon informed the Court (through
12 counsel) that he would not be appearing at the settlement
13 conference as scheduled. Accordingly, the settlement conference
14 (which Conlon had requested) was vacated (#40).

15 In response to the second amended complaint, all of the
16 defendants again filed their joint motion to dismiss or for
17 summary judgment (#44), along with a statement of undisputed
18 facts (#45). Following the filing of that motion and prior to
19 any opposition thereto, the parties entered into a stipulation
20 which provided (1) for the dismissal of all defendants except the
21 United States, (2) for a dismissal of all actions against the
22 United States except claims arising under the Federal Tort Claims
23 Act (FTCA), and (3) for a stay of the action against the United
24 States for 60 days so that the parties could (again) seek the
25 services of the Court for a settlement conference. The
26 stipulation was approved by the Court on May 6, 2003 (#53). In
27 addition to approving the stipulation of the parties, the Court

1 noted that "This stipulation and order disposes of defendants'
2 motion (#44) to dismiss." See Order (#53). In fact, the
3 stipulation did not "dispose" of the pending motion to dismiss.
4 Rather, the stipulation disposed of only a portion of the pending
5 motion; specifically, it disposed of the motion as to all
6 defendants other than the United States and all claims other than
7 FTCA claims. As to the remainder of the motion (which sought
8 dismissal of the FTCA claims or summary judgment in favor of the
9 United States), the stipulation provided for a limited stay of
10 the matter so that a settlement conference could (again) be
11 scheduled.

12 A settlement conference was again scheduled before the
13 United States Magistrate Judge for July 16, 2003 (#55). Again,
14 Conlon failed to appear for the scheduled conference (#56).
15 Conlon's counsel then sought leave to withdraw as counsel of
16 record, which motion was granted on September 15, 2003 (#60).

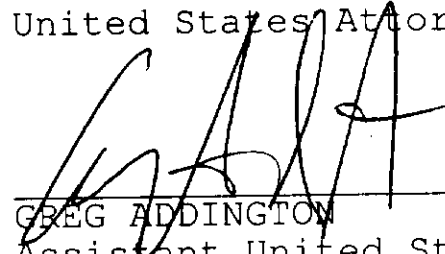
17 The United States now renews its motion (#44) to dismiss the
18 FTCA claims asserted in the second amended complaint or, in the
19 alternative, for summary judgment. In support thereof, the United
20 States refers to the memorandum of law which accompanied the
21 previously-filed motion (#44) and the statement of undisputed
22 facts (#45) which accompanied that motion. The United States
23 argues that the FTCA negligence-based claims against the United
24 States (which are the only claims which remain) are barred by the
25 applicable statute of limitations and, even if not so barred,
26 lack sufficient evidentiary support. The arguments which support
27
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1 the United States' position are set forth at pages 17-19 and
2 pages 33-35 of the previously-filed motion (#44). No opposition
3 to the motion has been filed.

4 Accordingly, this action against the United States should be
5 dismissed or, alternatively, summary judgment entered against
6 plaintiff and in favor of the United States.

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8 Respectfully submitted,

9 DANIEL G. BOGDEN
United States Attorney

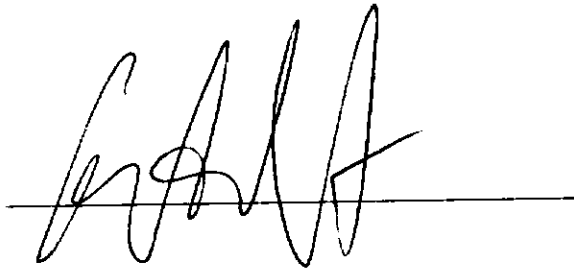
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12 GREG ADDINGTON

Assistant United States Attorney
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing RENEWAL OF UNITED STATES' MOTION TO DISMISS ACTION OR FOR SUMMARY JUDGMENT was mailed by first-class mail, postage pre-paid, on October 15, 2003

Michael J. Conlon
Washoe County Jail
911 Parr Blvd.
Reno, NV 89512

A handwritten signature in black ink, appearing to read "M. Conlon", is written over a horizontal line.